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5 U.S. DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 DEPUTY

Honorable John C. Coughenour

9 UNITED STATES DISTRICT COURT FOR THE
10 WESTERN DISTRICT OF WASHINGTON
11 AT SEATTLE

12 UNITED STATES OF AMERICA,

NO. CR15-202JCC

13 Plaintiff,

PLEA AGREEMENT

15 v.

16 GUSTAVO GARCIA-VALENCIA,

17 Defendant.

19
20 The United States of America, by and through Annette L. Hayes, United States
21 Attorney for the Western District of Washington, and Steven Masada and Grady Leupold,
22 Assistant United States Attorneys for said District, GUSTAVO GARCIA-VALENCIA,
23 and his attorney, Bryan Hershman, enter into the following Agreement, pursuant to
24 Federal Rule of Criminal Procedure 11(c):

25 1. **Charges.** Defendant, having been advised of the right to have this matter
26 tried before a jury, agrees to waive that right and enters a plea of guilty to the following
27 charges contained in the Fourth Superseding Indictment.

1 a. Conspiracy to Distribute Controlled Substances, a lesser included
 2 offense as charged in Count 1, in violation of Title 21, United States Code, Sections
 3 841(a), 841(b)(1)(C), and 846; and

4 b. Possession of a Firearm by a Prohibited Person, as charged in
 5 Count 11, in violation of Title 18, United States Code, Section 922(g)(1).

6 By entering pleas of guilty, Defendant hereby waives all objections to the form of
 7 the charging document. Defendant further understands that before entering his guilty
 8 pleas he will be placed under oath. Any statement given by Defendant under oath may be
 9 used by the United States in a prosecution for perjury or false statement.

10 2. **Elements of Offense.** The elements of the offenses to which Defendant is
 11 pleading guilty are as follows:

12 a. The elements of Conspiracy to Distribute Controlled Substances, in
 13 violation of Title 21, United States Code, Sections 841(a) and 846, are as follows:

14 First, beginning at a time unknown, but within the last five (5) years,
 15 and continuing to on or about June 30, 2015, there was an agreement between two or
 16 more persons to distribute controlled substances; and

17 Second, Defendant became a member of the conspiracy knowing its
 18 object and intending to help accomplish it.

19 b. The elements of Possession of a Firearm by a Prohibited Person, in
 20 violation of Title 18, United States Code, Section 922(g)(1), are as follows:

21 First, the defendant knowingly possessed a particular firearm;

22 Second, that particular firearm had been shipped or transported from
 23 one state to another, or between a foreign nation and the United States; and

24 Third, at the time the defendant possessed that firearm, the defendant
 25 had been convicted of a crime punishable by imprisonment for a term exceeding one
 26 year.

27 3. **The Penalties.** Defendant understands that the statutory penalties
 28 applicable to the offenses to which he is pleading guilty are as follows:

1 a. For the offense of Conspiracy to Distribute Controlled Substances:
2 A maximum term of imprisonment of up to twenty (20) years, a fine of up to one million
3 dollars (\$1,000,000), a period of supervision following release from prison of at least
4 three (3) years, and a mandatory special assessment of one hundred dollars (\$100).

5 b. For the offense of Possession of a Firearm by a Prohibited Person:
6 A maximum term of imprisonment of up to ten (10) years, a fine of up to two hundred
7 and fifty thousand dollars (\$250,000), a period of supervision following release from
8 prison of up to three (3) years, and a mandatory special assessment of one hundred
9 dollars (\$100).

10 If a probationary sentence is imposed, the probation period can be for up to five
11 (5) years.

12 Defendant agrees that the special assessment shall be paid at or before the time of
13 sentencing.

14 Defendant understands that supervised release is a period of time following
15 imprisonment during which he will be subject to certain restrictive conditions and
16 requirements. Defendant further understands that if supervised release is imposed and he
17 violates one or more of the conditions or requirements, Defendant could be returned to
18 prison for all or part of the term of supervised release that was originally imposed. This
19 could result in Defendant's serving a total term of imprisonment greater than the statutory
20 maximum stated above.

21 Defendant understands that as a part of any sentence, in addition to any term of
22 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
23 restitution to any victim of the offense, as required by law.

24 Defendant further understands that a consequence of pleading guilty may include
25 the forfeiture of certain property either as a part of the sentence imposed by the Court, or
26 as a result of civil judicial or administrative process.

27 Defendant agrees that any monetary penalty the Court imposes, including the
28 special assessment, fine, costs, or restitution, is due and payable immediately and further

1 agrees to submit a completed Financial Statement of Debtor form as requested by the
 2 United States Attorney's Office.

3 **4. Drug Offenses - Program Eligibility.** Defendant understands that by
 4 pleading guilty to a felony drug offense, Defendant will become ineligible for certain
 5 food stamp and Social Security benefits as directed by Title 21, United States Code,
 6 Section 862a.

7 **5. Enhanced Penalty.** Pursuant to this Plea Agreement, and conditioned
 8 upon Defendant's fulfillment of all of its terms and conditions, the United States Attorney
 9 agrees not to file an enhanced penalty information alleging Defendant's prior felony drug
 10 conviction pursuant to 21 U.S.C. § 851.

11 **6. Immigration Consequences.** Defendant recognizes that pleading guilty
 12 may have consequences with respect to his immigration status because he is not a citizen
 13 of the United States. Under federal law, a broad range of crimes are grounds for removal,
 14 including the offense to which Defendant is pleading guilty, and some offenses make
 15 removal from the United States presumptively mandatory. Removal and other
 16 immigration consequences are the subject of a separate proceeding, however, and
 17 Defendant understands that no one, including his attorney or the district court, can predict
 18 to a certainty the effect of his conviction on his immigration status. Defendant
 19 nevertheless affirms that he wants to plead guilty regardless of any immigration
 20 consequences that his guilty plea may entail, even if the consequence is his mandatory
 21 removal from the United States.

22 **7. Rights Waived by Pleading Guilty.** Defendant understands that by
 23 pleading guilty, he knowingly and voluntarily waives the following rights:

24 a. The right to plead not guilty and to persist in a plea of not guilty;
 25 b. The right to a speedy and public trial before a jury of his peers;
 26 c. The right to the effective assistance of counsel at trial, including, if
 27 Defendant could not afford an attorney, the right to have the Court appoint one for him;

- 1 d. The right to be presumed innocent until guilt has been established
 2 beyond a reasonable doubt at trial;
 3 e. The right to confront and cross-examine witnesses against Defendant
 4 at trial;
 5 f. The right to compel or subpoena witnesses to appear on his behalf at
 6 trial;
 7 g. The right to testify or to remain silent at trial, at which trial such
 8 silence could not be used against Defendant; and
 9 h. The right to appeal a finding of guilt or any pretrial rulings.

10 8. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
 11 guaranteed what sentence the Court will impose.

12 9. **Statement of Facts.** The parties agree on the following facts. Defendant
 13 admits he is guilty of the charged offense or offenses:

14 For a period of time within the last five years, the defendant GUSTAVO
 15 GARCIA-VALENCIA knowingly and intentionally entered into an agreement
 16 with others to distribute controlled substances, including heroin and
 17 methamphetamine, within the Western District of Washington and elsewhere.
 18 More specifically, GARCIA-VALENCIA, with others, distributed drugs in
 19 Western Washington and elsewhere. For example, in furtherance of the
 20 conspiracy, on May 6, 2015, GARCIA-VALENCIA met with an associate in
 21 Marysville, Washington, and acquired samples of heroin for re-distribution. ~~The~~
 22 ~~samples related to a prospective larger heroin delivery.~~ On May 8, 2015,
 23 GARCIA-VALENCIA and an associate went to a residence in Mount Vernon,
 24 Washington, where they obtained drugs from a load vehicle used by the
 25 conspiracy, which was intended for further distribution.

26 On June 30, 2015, investigators conducted a warrant search of GARCIA-
 27 VALENCIA's residence, located at 18808 SR 530 NE, Arlington, Washington.
 28 Investigators arrested GARCIA-VALENCIA and located packaging material, wire
 transfer receipts, and numerous cell phones, including the device used to
 communicate with his aforementioned associate. Investigators also recovered two
 firearms, namely, an Izhmash, IZH-70, .380 ACP handgun (serial number:
 BAC1642), with a silencer, from the master bedroom, and an Izhmash, IJ70-
 18AH, 9mm Makarov handgun (importer serial number: RT02342), with a flash

1 suppressor, from the laundry room, ammunition, and a holster. Both firearms had
 2 been shipped and transported between a foreign nation and the United States.

3 At the time he knowingly possessed the firearms, GARCIA-VALENCIA
 4 had been convicted of a crime punishable by imprisonment for a term exceeding
 5 one year, namely, Possession of Controlled Substance (cocaine), in San Mateo
 6 County Superior Court, California, and thus was a person prohibited from
 possessing such weapons.

7 The parties further agree that the Court may consider additional facts contained in
 8 the Presentence Report (subject to standard objections by the parties) and/or that may be
 9 presented by the United States or Defendant at the time of sentencing, and that the factual
 10 statement contained herein is not intended to limit the facts that the parties may present to
 11 the Court at the time of sentencing.

12 **10. Sentencing Factors.** The parties agree that the following Sentencing
 Guidelines provisions apply to this case:

13 a. With regard to Count 1, a base offense level of 30, pursuant to
 14 USSG § 2D1.1(c)(4), corresponding to a quantity of methamphetamine and heroin
 15 equivalent to at least 1,000 kg but less than 3,000 kg of marijuana;

16 b. A two-level increase, pursuant to USSG § 2D1.1(b)(1), based upon
 17 the possession of a dangerous weapon (including a firearm); and,

18 c. A three-level reduction for acceptance of responsibility, conditioned
 19 upon Defendant's fulfillment of the requirements stated at USSG § 3E1.1.

20 The parties agree they are free to present arguments regarding the applicability of
 21 all other provisions of the United States Sentencing Guidelines. Defendant understands,
 22 however, that at the time of sentencing, the Court is free to reject these stipulated
 23 adjustments, and is further free to apply additional downward or upward adjustments in
 24 determining Defendant's Sentencing Guidelines range.

25 **11. Sentencing Recommendation Regarding Imprisonment.** Pursuant to
 26 Federal Rule of Criminal Procedure 11(c)(1)(B), the United States agrees to recommend
 27 that the appropriate term of imprisonment to be imposed by the Court at the time of

1 sentencing is a term no greater than sixty-six (66) months. Defendant may recommend
 2 any sentence authorized by law. Unless otherwise set forth in this agreement, both
 3 parties remain free to present arguments regarding other aspects of sentencing, such as
 4 the computation of the guidelines range, the term and conditions of supervised release,
 5 fines, and restitution.

6 Defendant understands that the parties' recommendations are not binding on the
 7 Court and the Court may reject the recommendation of the parties and may impose any
 8 term of imprisonment up to the statutory maximum penalty authorized by law.
 9 Defendant further understands that he cannot withdraw his guilty plea simply because of
 10 the sentence imposed by the district court.

11 **12. United States Sentencing Guidelines.** Defendant understands and
 12 acknowledges that the Court must consider the sentencing range calculated under the
 13 United States Sentencing Guidelines and possible departures under the Sentencing
 14 Guidelines together with the other factors set forth in Title 18, United States Code,
 15 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the
 16 history and characteristics of the defendant; (3) the need for the sentence to reflect the
 17 seriousness of the offense, to promote respect for the law, and to provide just punishment
 18 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal
 19 conduct; (5) the need for the sentence to protect the public from further crimes of the
 20 defendant; (6) the need to provide the defendant with educational and vocational training,
 21 medical care, or other correctional treatment in the most effective manner; (7) the kinds
 22 of sentences available; (8) the need to provide restitution to victims; and (9) the need to
 23 avoid unwarranted sentence disparity among defendants involved in similar conduct who
 24 have similar records. Accordingly, Defendant understands and acknowledges that:

25 a. The Court will determine applicable Defendant's Sentencing
 26 Guidelines range at the time of sentencing;

27 b. After consideration of the Sentencing Guidelines and the factors in

1 ||| 18 U.S.C. § 3553(a), the Court may impose any sentence authorized by law, up to the
 2 maximum term authorized by law;

3 c. The Court is not bound by any recommendation regarding the
 4 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
 5 range offered by the parties or the United States Probation Department, or by any
 6 stipulations or agreements between the parties in this Plea Agreement; and

7 d. Defendant may not withdraw his guilty pleas solely because of the
 8 sentence imposed by the Court.

9 13. **Acceptance of Responsibility.** At sentencing, if the district court
 10 concludes Defendant qualifies for a downward adjustment acceptance for acceptance of
 11 responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or
 12 greater, the United States will make the motion necessary to permit the district court to
 13 decrease the total offense level by three (3) levels pursuant to USSG § 3E1.1(a) and (b),
 14 because Defendant has assisted the United States by timely notifying the United States of
 15 his intention to plead guilty, thereby permitting the United States to avoid preparing for
 16 trial and permitting the Court to allocate its resources efficiently.

17 14. **Forfeiture of Contraband.** Defendant also agrees that if any law
 18 enforcement agency seized any firearms or other illegal contraband that was in
 19 Defendant's direct or indirect control, Defendant consents to the administrative forfeiture,
 20 official use, and/or destruction of said firearms or contraband by any law enforcement
 21 agency involved in the seizure of these items.

22 15. **Forfeiture of Assets.** Defendant agrees to forfeit to the United States
 23 immediately all of Defendant's right, title and interest, if any, in any and all property, real
 24 or personal, that was used, or intended to be used, in any manner or part, to commit or to
 25 facilitate the commission of the conspiracy to distribute controlled substances, and any
 26 property constituting, or derived from, any proceeds Defendant obtained, directly or
 27 indirectly, as the result of this offense, that are subject to forfeiture pursuant to Title 21,
 28 United States Code, Section 853; and/or any firearms, magazines, and ammunition

1 involved in the commission of a felony firearm offense in violation of Title 18, United
 2 States Code, Section 922(g), including but not limited to:

3 a. Two firearms, a silencer, a flash suppressor, magazines and
 4 accessories, and ammunition seized from 18808 SR 530, Arlington, Washington, on or
 5 about June 30, 2015, to include an Izhmash, IZH-70, .380 ACP handgun (serial number:
 6 BAC1642), and an Izhmash, IJ70-18AH, 9mm Makarov handgun (importer serial
 number: RT02342).

7 Solely for the purposes of forfeiture, Defendant agrees that the above listed assets
 8 are the proceeds of, or were used and intended to be used to facilitate, the unlawful
 9 conspiracy to distribute controlled substances as set forth in Count 1.

10 Defendant agrees to fully assist the United States in the forfeiture of the listed
 11 assets and to take whatever steps are necessary to pass clear title to the United States,
 12 including but not limited to: surrendering title and executing any documents necessary to
 13 effectuate such forfeiture; assisting in bringing any assets located outside the United
 14 States within the jurisdiction of the United States; and taking whatever steps are
 15 necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted,
 16 hidden, or otherwise made unavailable for forfeiture. Defendant agrees not to file a claim
 17 to any of the listed property in any civil forfeiture proceeding, administrative or judicial,
 18 which may be initiated.

19 The United States reserves its right to proceed against any remaining assets not
 20 identified in this Plea Agreement, including any property in which Defendant has any
 21 interest or control, if said assets, real or personal, tangible or intangible, constitute or are
 22 traceable to proceeds or facilitated violation of Title 21, United States Code, Section 841
et seq.

24 **16. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
 25 the United States Attorney's Office for the Western District of Washington agrees not to
 26 prosecute Defendant for any additional offenses known to it as of the time of this
 27 Agreement that are based upon evidence in its possession at this time, and that arise out
 28 of the conduct giving rise to this investigation. In this regard, Defendant recognizes the

1 United States has agreed not to prosecute all of the criminal charges the evidence
 2 establishes were committed by Defendant solely because of the promises made by
 3 Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing
 4 the Presentence Report, the United States Attorney's Office will provide the United
 5 States Probation Office with evidence of all conduct committed by Defendant.

6 Defendant agrees that any charges to be dismissed before or at the time of
 7 sentencing were substantially justified in light of the evidence available to the United
 8 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
 9 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119
 10 (1997).

11 **17. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if
 12 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
 13 Agreement and Defendant may be prosecuted for all offenses for which the United States
 14 has evidence. Defendant agrees not to oppose any steps taken by the United States to
 15 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
 16 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,
 17 Defendant has waived any objection to the re-institution of any charges in the Indictment
 18 that were previously dismissed or any additional charges that had not been prosecuted.

19 Defendant further understands that if, after the date of this Agreement, Defendant
 20 should engage in illegal conduct, or conduct that violates any conditions of release or the
 21 conditions of his confinement, (examples of which include, but are not limited to,
 22 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
 23 pending sentencing, and false statements to law enforcement agents, the Pretrial Services
 24 Officer, Probation Officer, or Court), the United States is free under this Agreement to
 25 file additional charges against Defendant or to seek a sentence that takes such conduct
 26 into consideration by requesting the Court to apply additional adjustments or
 27 enhancements in its Sentencing Guidelines calculations in order to increase the applicable
 28 advisory Guidelines range, and/or by seeking an upward departure or variance from the

1 calculated advisory Guidelines range. Under these circumstances, the United States is
 2 free to seek such adjustments, enhancements, departures, and/or variances even if
 3 otherwise precluded by the terms of the plea agreement.

4 **18. Waiver of Appellate Rights and Rights to Collateral Attacks.**

5 Defendant acknowledges that by entering the guilty plea(s) required by this plea
 6 agreement, Defendant waives all rights to appeal from his conviction and any pretrial
 7 rulings of the court. Defendant further agrees that, provided the court imposes a custodial
 8 sentence that is within or below the Sentencing Guidelines range (or the statutory
 9 mandatory minimum, if greater than the Guidelines range) as determined by the court at
 10 the time of sentencing, Defendant waives to the full extent of the law:

11 a. Any right conferred by Title 18, United States Code, Section 3742,
 12 to challenge, on direct appeal, the sentence imposed by the court, including any fine,
 13 restitution order, probation or supervised release conditions, or forfeiture order (if
 14 applicable); and

15 b. Any right to bring a collateral attack against the conviction and
 16 sentence, including any restitution order imposed, except as it may relate to the
 17 effectiveness of legal representation.

18 This waiver does not preclude Defendant from bringing an appropriate motion
 19 pursuant to 28 U.S.C. § 2241, to address the conditions of his confinement or the
 20 decisions of the Bureau of Prisons regarding the execution of his sentence.

21 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
 22 attacking (except as to effectiveness of legal representation) the conviction or sentence in
 23 any way, the United States may prosecute Defendant for any counts, including those with
 24 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
 25 Agreement.

26 **19. Voluntariness of Plea.** Defendant agrees that he has entered into this Plea
 27 Agreement freely and voluntarily and that no threats or promises, other than the promises
 28

contained in this Plea Agreement, were made to induce Defendant to enter his pleas of guilty.

20. **Statute of Limitations.** In the event this Agreement is not accepted by the Court for any reason, or Defendant has breached any of the terms of this Plea Agreement, the statute of limitations shall be deemed to have been tolled from the date of the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach of the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

21. Completeness of Agreement. The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties. This Agreement binds only the United States Attorney's Office for the Western District of Washington. It does not bind any other United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor.

Dated this 19th day of December, 2016.

GUSTAVO GARCIA-VALENCIA

GUSTAVO GARCIA VILLENA
Defendant

Defendant

BRYAN HERSHMAN

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STEVEN MASADA

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